

Office - Supreme Court, U.S.

FILED

MAR 25 1957

JOHN T. FEY, Clerk

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956.

No. 596

UNITED STATES OF AMERICA,
Petitioner,

vs.

WALTER KORPAN,
Respondent.

**RESPONDENT'S MEMORANDUM IN OPPOSITION TO
MOTION OF D. GOTTLIEB AND CO. FOR LEAVE TO
FILE BRIEF AS AMICUS CURIAE.**

ROBERT A. SPRECHER,
100 West Monroe Street,
Chicago 3, Illinois,
Attorney for Respondent.

Of Counsel:

SIMON HERR,
111 West Monroe Street,
Chicago 3, Illinois,

FRANK A. KARABA,
100 West Monroe Street,
Chicago 3, Illinois.

IN THE
Supreme Court of the United States

OCTOBER TERM, 1956.

No. 596.

UNITED STATES OF AMERICA,
Petitioner,
vs.

WALTER KORPAN,
Respondent.

**RESPONDENT'S MEMORANDUM IN OPPOSITION TO
MOTION OF D. GOTTLIEB AND CO. FOR LEAVE TO
FILE BRIEF AS AMICUS CURIAE.**

The respondent, Walter Korpan, states his reasons for objecting to, and withholding his consent to, the motion of D. Gottlieb and Co. for leave to file a brief as *amicus curiae*, as follows:

1. The movant has failed to meet the requirements of Rule 42 (3) of this Court, by failing to set forth facts or questions of law that have not been, or reasons for believing that they will not adequately be, presented by the parties, and their relevancy to the disposition of the case.

2. The movant in the brief proposed to be filed makes completely unsupported and undocumented statements and arguments and seeks to present, and in effect to introduce in this case for the first time, 32 "exhibits" which are not

part of the record in this case, which would not have been admissible if offered in the trial court, and which are completely unidentified as to source. The movant is attempting to retry the case on an *ex parte* basis in this Court free from the restrictions of the rules of evidence. An officer of the movant, D. Gottlieb & Co., was called as an expert witness on behalf of the United States upon the trial of this case in the District Court (R. 44-53) and had an opportunity to present any evidence admissible in this case.

3. If movant's brief is permitted to be filed, respondent will be deprived of the opportunity to meet and rebut this material except through the unusual and cumbersome procedure of requesting other manufacturers of coin-operated devices, and particularly those manufacturers whose devices are reproduced or discussed in movant's brief, to seek to file additional briefs as *amici curiae*, or in any event to provide respondent with the material necessary to rebut movant's material.

4. The movant has not shown that the questions in this case will be inadequately presented, but simply that the movant will gain a substantial competitive advantage if its games are taxed on the lower basis whereas those of its competitors are taxed at a higher rate. If the movant is permitted to introduce this extraneous issue, all other manufacturers should likewise be permitted to defend their legal and competitive position. Respondent has been informed by Lion Manufacturing Corp., which manufactured the games in issue in this case, and by several other manufacturers of coin-operated devices that they shall desire to seek to file briefs as *amici curiae* if this Court grants movant's motion. The record in this case should not be cluttered or the issues confused by a quarrel among competing manufacturers at the expense of respondent who is attempting to sustain in this Court the reversal by the

Court of Appeals of his indictment and conviction in a criminal case.

5. The simple question involved in this case is what Congress intended when it described "a so-called slot machine." The answer can be adequately and completely ascertained by examining the language of the statute and the traditional sources of legislative history, which counsel for both parties presented exhaustively before the Court of Appeals and intend to present in this court in great detail. This Court will receive no assistance whatsoever from the unsupported and undocumented opinions and speculations of one competitor as to what Congress intended.

Conclusion.

The motion of D. Gottlieb & Co. for leave to file a brief as *amicus curiae* should be denied. If it is granted, the briefs of other manufacturers who take a position directly contrary to that of the movant should be permitted to be filed. In any event, respondent's time for filing its principal brief should be enlarged so that respondent is given a full thirty days after this Court determines whether respondent must respond to the brief of *amicus curiae*, since *amicus curiae* did not file its motion until the day on which petitioner's brief was also filed.

Respectfully submitted,

ROBERT A. SPRECHER,
100 West Monroe Street,
Chicago 3, Illinois,
Attorney for Respondent.

Of Counsel:

SIMON HERR,
111 West Monroe Street,
Chicago 3, Illinois,

FRANK A. KARABA,
100 West Monroe Street,
Chicago 3, Illinois.